

VIII-1

1 **TITLE VIII—GENERAL**
2 **PROVISIONS**

3 **SEC. 801. GENERAL PROVISIONS.**

4 The Elementary and Secondary Education Act, as
5 amended by this Act, is further amended by adding at the
6 end of title VII the following:

7 **“TITLE VIII—GENERAL**
8 **PROVISIONS**

9 **“PART A—DEFINITIONS**

10 **“SEC. 8101. DEFINITIONS.**

11 “Except as otherwise provided, for the purposes of
12 this Act, the following terms have the following meanings:

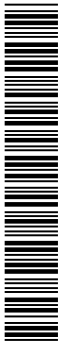
13 “(1) Average daily attendance—

14 “(A) Except as provided otherwise by
15 State law or this paragraph, the term ‘average
16 daily attendance’ means—

17 “(i) the aggregate number of days of
18 attendance of all students during a school
19 year; divided by

20 “(ii) the number of days school is in
21 session during such school year.

22 “(B) The Secretary shall permit the con-
23 version of average daily membership (or other
24 similar data) to average daily attendance for
25 local educational agencies in States that provide



VIII-2

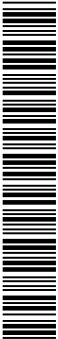
1 State aid to local educational agencies on the
2 basis of average daily membership or such other
3 data.

4 “(C) If the local educational agency in
5 which a child resides makes a tuition or other
6 payment for the free public education of the
7 child in a school located in another school dis-
8 trict, the Secretary shall, for purposes of this
9 Act—

10 “(i) consider the child to be in attend-
11 ance at a school of the agency making such
12 payment; and

13 “(ii) not consider the child to be in at-
14 tendance at a school of the agency receiv-
15 ing such payment.

16 “(D) If a local educational agency makes a
17 tuition payment to a private school or to a pub-
18 lic school of another local educational agency
19 for a child with disabilities, as defined in sec-
20 tion paragraph (5), the Secretary shall, for the
21 purposes of this Act, consider such child to be
22 in attendance at a school of the agency making
23 such payment.



VIII-3

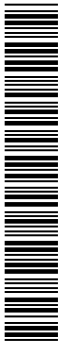
1 “(2) AVERAGE PER-PUPIL EXPENDITURE.—The
2 term ‘average per-pupil expenditure’ means, in the
3 case of a State or of the United States—

4 “(A) without regard to the source of
5 funds—

6 “(i) the aggregate current expendi-
7 tures, during the third fiscal year pre-
8 ceding the fiscal year for which the deter-
9 mination is made (or, if satisfactory data
10 for that year are not available, during the
11 most recent preceding fiscal year for which
12 satisfactory data are available) of all local
13 educational agencies in the State or, in the
14 case of the United States for all States
15 (which, for the purpose of this paragraph,
16 means the 50 States and the District of
17 Columbia); plus

18 “(ii) any direct current expenditures
19 by the State for the operation of such
20 agencies; divided by

21 “(B) the aggregate number of children in
22 average daily attendance to whom such agencies
23 provided free public education during such pre-
24 ceding year.



VIII-4

1 “(3) BEGINNING TEACHER.—The term ‘begin-
2 ning teacher’ means an educator in a public school
3 who has been teaching less than a total of 3 com-
4 plete school years.

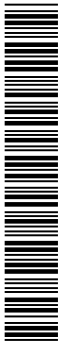
5 “(4) CHILD.—The term ‘child’ means any per-
6 son within the age limits for which the State pro-
7 vides free public education.

8 “(5) CHILD WITH DISABILITY.—The term ‘child
9 with a disability’ means a child—

10 “(A) with mental retardation, hearing im-
11 pairments, hearing impairments (including
12 deafness), speech or language impairments, vis-
13 ual impairments (including blindness), serious
14 emotional disturbance (hereinafter referred to
15 as ‘emotional disturbance’), orthopedic impair-
16 ments, autism, traumatic brain injury, other
17 health impairments, or specific learning disabil-
18 ities; and

19 “(B) who, by reason thereof, needs special
20 education and related services.

21 “(6) COMMUNITY-BASED ORGANIZATION.—The
22 term ‘community-based organization’ means a public
23 or private nonprofit organization of demonstrated ef-
24 fectiveness that—



VIII-5

1 “(A) is representative of a community or
2 significant segments of a community; and

3 “(B) provides educational or related serv-
4 ices to individuals in the community.

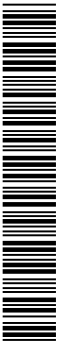
5 “(7) CONSOLIDATED LOCAL APPLICATION.—
6 The term ‘consolidated local application’ means an
7 application submitted by a local educational agency
8 pursuant to section 14305.

9 “(8) CONSOLIDATED LOCAL PLAN.—The term
10 ‘consolidated local plan’ means a plan submitted by
11 a local educational agency pursuant to section
12 14305.

13 “(9) CONSOLIDATED STATE APPLICATION.—
14 The term ‘consolidated State application’ means an
15 application submitted by a State educational agency
16 pursuant to section 14302.

17 “(10) CONSOLIDATED STATE PLAN.—The term
18 ‘consolidated State plan’ means a plan submitted by
19 a State educational agency pursuant to section
20 14302.

21 “(11) COUNTY.—The term ‘county’ means one
22 of the divisions of a State used by the Secretary of
23 Commerce in compiling and reporting data regard-
24 ing counties.



VIII-6

1 “(12) COVERED PROGRAM.—The term ‘covered
2 program’ means each of the programs authorized
3 by—

4 “(A) part A of title I;

5 “(B) part B of title I;

6 “(C) part C of title I;

7 “(D) part D of title I;

8 “(E) part F of title I;

9 “(F) part G of title I;

10 “(G) part A of title II;

11 “(H) part A of title III;

12 “(I) part A of title V;

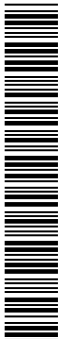
13 “(J) part B of title V; and

14 “(K) part A of title IV:

15 “(13) CURRENT EXPENDITURES.—The term
16 ‘current expenditures’ means expenditures for free
17 public education—

18 “(A) including expenditures for adminis-
19 tration, instruction, attendance, pupil transpor-
20 tation services, operation and maintenance of
21 plant, fixed charges, and net expenditures to
22 cover deficits for food services and student body
23 activities; but

24 “(B) not including expenditures for com-
25 munity services, capital outlay, and debt serv-



VIII-7

1 ice, or any expenditures made from funds re-
2 ceived under title I and title VI.

3 “(14) DEPARTMENT.—The term ‘Department’
4 means the Department of Education.

5 “(15) EDUCATIONAL SERVICE AGENCY.—The
6 term ‘educational service agency’ means a regional
7 public multiservice agency authorized by State stat-
8 ute to develop, manage, and provide services or pro-
9 grams to local educational agencies.

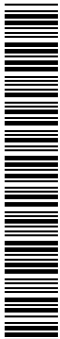
10 “(16) EFFECTIVE SCHOOLS PROGRAM.—The
11 term ‘effective schools program’ means a school-
12 based program that may encompass preschool
13 through secondary school levels and that has the ob-
14 jectives of—

15 “(A) promoting school-level planning, in-
16 structional improvement, and staff development;

17 “(B) increasing the academic achievement
18 levels of all children and particularly education-
19 ally disadvantaged children; and

20 “(C) achieving as ongoing conditions in the
21 school the following factors identified through
22 scientifically based research as distinguishing
23 effective from ineffective schools:

24 “(i) Strong and effective administra-
25 tive and instructional leadership that cre-



VIII-8

1 ates consensus on instructional goals and
2 organizational capacity for instructional
3 problem solving.

4 “(ii) Emphasis on the acquisition of
5 basic and advanced academic skills.

6 “(iii) A safe and orderly school envi-
7 ronment that allows teachers and pupils to
8 focus their energies on academic achieve-
9 ment.

10 “(iv) Continuous review of students
11 and programs to evaluate the effects of in-
12 struction.

13 “(17) ELEMENTARY SCHOOL.—The term ‘ele-
14 mentary school’ means a nonprofit institutional day
15 or residential school, including a public elementary
16 charter school, that provides elementary education,
17 as determined under State law.

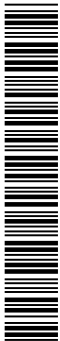
18 “(18) ESSENTIAL COMPONENTS OF READING
19 INSTRUCTION.—The term ‘essential components of
20 reading instruction’ means explicit and systematic
21 instruction in—

22 “(A) phonemic awareness;

23 “(B) phonics;

24 “(C) vocabulary development;

25 “(D) reading fluency; and



VIII-9

1 “(E) reading comprehension strategies.

2 “(19) FAMILY LITERACY SERVICES.—The term
3 ‘family literacy services’ means services provided to
4 participants on a voluntary basis that are of suffi-
5 cient intensity in terms of hours, and of sufficient
6 duration, to make sustainable changes in a family,
7 and that integrate all of the following activities:

8 “(A) Interactive literacy activities between
9 parents and their children.

10 “(B) Training for parents regarding how
11 to be the primary teacher for their children and
12 full partners in the education of their children.

13 “(C) Parent literacy training that leads to
14 economic self-sufficiency.

15 “(D) An age-appropriate education to pre-
16 pare children for success in school and life ex-
17 periences.

18 “(20) FREE PUBLIC EDUCATION.—The term
19 ‘free public education’ means education that is
20 provided—

21 “(A) at public expense, under public super-
22 vision and direction, and without tuition charge;
23 and

24 “(B) as elementary or secondary school
25 education as determined under applicable State



VIII-10

1 law, except that such term does not include any
2 education provided beyond grade 12.

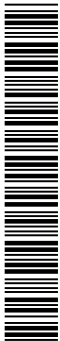
3 “(21) FULLY QUALIFIED.—The term ‘fully
4 qualified’—

5 “(A) when used with respect to a public el-
6 ementary or secondary school teacher (other
7 than a teacher teaching in a public charter
8 school), means that the teacher has obtained
9 State certification as a teacher (including cer-
10 tification obtained through alternative routes to
11 certification) or passed the State teacher licens-
12 ing exam and holds a license to teach in such
13 State; and

14 “(B) when used with respect to—

15 “(i) an elementary school teacher,
16 means that the teacher holds a bachelor’s
17 degree and demonstrates knowledge and
18 teaching skills in reading, writing, mathe-
19 matics, science, and other areas of the ele-
20 mentary school curriculum; and

21 “(ii) a middle or secondary school
22 teacher, means that the teacher holds a
23 bachelor’s degree and demonstrates a high
24 level of competency in all subject areas in
25 which he or she teaches through—



VIII-11

1 “(I) a passing level of perform-
2 ance on a rigorous State or local aca-
3 demic subject areas test; or

4 “(II) completion of an academic
5 major in each of the subject areas in
6 which he or she provides instruction.

7 “(22) GIFTED AND TALENTED.—The term
8 ‘gifted and talented’, when used with respect to stu-
9 dents, children or youth, means students, children or
10 youth who give evidence of high performance capa-
11 bility in areas such as intellectual, creative, artistic,
12 or leadership capacity, or in specific academic fields,
13 and who require services or activities not ordinarily
14 provided by the school in order to fully develop such
15 capabilities.

16 “(23) INSTITUTION OF HIGHER EDUCATION.—
17 The term ‘institution of higher education’ has the
18 meaning given that term in section 101 of the High-
19 er Education Act of 1965.

20 “(24) LIMITED ENGLISH PROFICIENT STU-
21 DENT.—The term ‘limited English proficient stu-
22 dent’ means an individual aged 5 through 17 en-
23 rolled in an elementary school or secondary school—

24 “(A) who—



VIII-12

1 “(i) was not born in the United States
2 or whose native language is a language
3 other than English;

4 “(ii)(I) is a Native American or Alas-
5 ka Native, or a native resident of the out-
6 lying areas; and

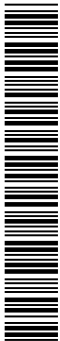
7 “(II) comes from an environment
8 where a language other than English has
9 had a significant impact on such individ-
10 ual’s level of English language proficiency;
11 or

12 “(iii) is migratory, whose native language
13 is a language other than English, and who
14 comes from an environment where a language
15 other than English is dominant; and

16 “(B) who has sufficient difficulty speaking,
17 reading, writing, or understanding the English
18 language, and whose difficulties may deny the
19 individual—

20 “(i) the ability to meet the State’s
21 proficient level of performance on State as-
22 sessments described in section 1111(b)(4)
23 in core academic subjects; or

24 “(ii) the opportunity to participate
25 fully in society.

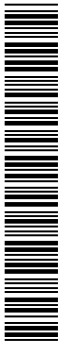


VIII-13

1 “(25) LOCAL EDUCATIONAL AGENCY.—(A) The
2 term ‘local educational agency’ means a public board
3 of education or other public authority legally con-
4 stituted within a State for either administrative con-
5 trol or direction of, or to perform a service function
6 for, public elementary or secondary schools in a city,
7 county, township, school district, or other political
8 subdivision of a State, or for such combination of
9 school districts or counties as are recognized in a
10 State as an administrative agency for its public ele-
11 mentary or secondary schools.

12 “(B) The term includes any other public insti-
13 tution or agency having administrative control and
14 direction of a public elementary or secondary school.

15 “(C) The term includes an elementary or sec-
16 ondary school funded by the Bureau of Indian Af-
17 fairs but only to the extent that such inclusion
18 makes such school eligible for programs for which
19 specific eligibility is not provided to such school in
20 another provision of law and such school does not
21 have a student population that is smaller than the
22 student population of the local educational agency
23 receiving assistance under this Act with the smallest
24 student population, except that such school shall not
25 be subject to the jurisdiction of any State edu-



VIII-14

1 cational agency other than the Bureau of Indian Af-
2 fairs.

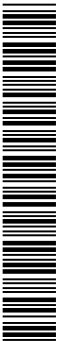
3 “(D) The term includes educational service
4 agencies and consortia of such agencies.

5 “(26) MENTORING.—The term ‘mentoring’
6 means a program in which an adult works with a
7 child or youth on a 1-to-1 basis, establishing a sup-
8 portive relationship, providing academic assistance,
9 and introducing the child or youth to new experi-
10 ences that enhance the child or youth’s ability to
11 excel in school and become a responsible citizen.

12 “(26) NATIVE AMERICAN AND NATIVE AMER-
13 ICAN LANGUAGE.—The terms ‘Native American’ and
14 ‘Native American language’ shall have the same
15 meaning given such terms in section 103 of the Na-
16 tive American Languages Act of 1990.

17 “(27) OTHER STAFF.—The term ‘other staff’
18 means pupil services personnel, librarians, career
19 guidance and counseling personnel, education aides,
20 and other instructional and administrative per-
21 sonnel.

22 “(28) OUTLYING AREA.—The term ‘outlying
23 area’ means the United States Virgin Islands,
24 Guam, American Samoa, and the Commonwealth of
25 the Northern Mariana Islands.



VIII-15

1 “(29) PARENT.—The term ‘parent’ includes a
2 legal guardian or other person standing in loco
3 parentis.

4 “(30) PUPIL SERVICES PERSONNEL; PUPIL
5 SERVICES.—(A) The term ‘pupil services personnel’
6 means school counselors, school social workers,
7 school psychologists, and other qualified professional
8 personnel involved in providing assessment, diag-
9 nosis, counseling, educational, therapeutic, and other
10 necessary services (including related services as such
11 term is defined in section 602(22) of the Individuals
12 with Disabilities Education Act) as part of a com-
13 prehensive program to meet student needs.

14 “(B) The term ‘pupil services’ means the serv-
15 ices provided by pupil services personnel.

16 “(31) READING.—The term ‘reading’ means a
17 complex system of deriving meaning from print that
18 requires all of the following:

19 “(A) Skills and knowledge to understand
20 how phonemes, or speech sounds are connected
21 in print.

22 “(B) Ability to decode unfamiliar words.

23 “(C) Ability to read fluently.



VIII-16

1 “(D) Sufficient background information
2 and vocabulary to foster reading comprehen-
3 sions.

4 “(E) Development of appropriate active
5 strategies to construct meaning from print.

6 “(F) Development and maintenance of a
7 motivation to read.

8 “(32) RIGOROUS DIAGNOSTIC READING ASSESS-
9 MENT.—The term ‘rigorous diagnostic reading as-
10 sessment’ means a diagnostic reading assessment
11 that—

12 “(A) is valid, reliable, and grounded on sci-
13 entifically based reading research;

14 “(B) measures progress in developing pho-
15 nemic awareness and phonics skills, vocabulary,
16 reading fluency, and reading comprehension;
17 and

18 “(C) identifies students who may be at risk
19 for reading failure or who are having difficulty
20 reading.

21 “(33) SCIENTIFICALLY BASED RESEARCH.—

22 The term ‘scientifically based research’—

23 “(A) means the application of rigorous,
24 systematic, and objective procedures to obtain



VIII-17

1 valid knowledge relevant to education activities
2 and programs; and

3 “(B) shall include research that—

4 “(i) employs systematic, empirical
5 methods that draw on observation or ex-
6 periment;

7 “(ii) involves rigorous data analyses
8 that are adequate to test the stated
9 hypotheses and justify the general conclu-
10 sions drawn;

11 “(iii) relies on measurements or obser-
12 vational methods that provide valid data
13 across evaluators and observers and across
14 multiple measurements and observations;

15 “(iv) is evaluated using randomized
16 experiments in which individuals, entities,
17 programs, or activities are randomly as-
18 signed to different variations (including a
19 control condition) to compare the relative
20 effects of the variations; and

21 “(v) has been accepted by a peer-re-
22 viewed journal or approved by a panel of
23 independent experts through a comparably
24 rigorous, objective, and scientific review.



VIII-18

1 “(34) SECONDARY SCHOOL.—The term ‘sec-
2 ondary school’ means a nonprofit institutional day or
3 residential school, including a public secondary char-
4 ter school, that provides secondary education, as de-
5 termined under State law, except that such term
6 does not include any education beyond grade 12.

7 “(35) SECRETARY.—The term ‘Secretary’
8 means the Secretary of Education.

9 “(36) STATE.—The term ‘State’ means each of
10 the 50 States, the District of Columbia, the Com-
11 monwealth of Puerto Rico, and each of the outlying
12 areas.

13 “(37) STATE EDUCATIONAL AGENCY.—The
14 term ‘State educational agency’ means the agency
15 primarily responsible for the State supervision of
16 public elementary and secondary schools.

17 “(38) TECHNOLOGY.—The term ‘technology’
18 means the latest state-of-the-art technology products
19 and services.

20 **“SEC. 8102. APPLICABILITY OF TITLE.**

21 “Parts B, C, D, and E of this title do not apply to
22 title VI of this Act.



VIII-19

1 **“SEC. 8103. APPLICABILITY TO BUREAU OF INDIAN AFFAIRS**
2 **OPERATED SCHOOLS.**

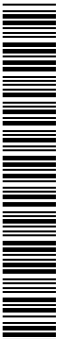
3 “For purposes of any competitive program under this
4 Act, a consortia of schools operated by the Bureau of In-
5 dian Affairs, a school operated under a contract or grant
6 with the Bureau of Indian Affairs in consortia with an-
7 other contract or grant school or tribal or community or-
8 ganization, or a Bureau of Indian Affairs school in con-
9 sortia with an institution of higher education, a contract
10 or grant school and tribal or community organization shall
11 be given the same consideration as a local educational
12 agency.

13 **“PART B—FLEXIBILITY IN THE USE OF**
14 **ADMINISTRATIVE AND OTHER FUNDS**

15 **“SEC. 8201. CONSOLIDATION OF STATE ADMINISTRATIVE**
16 **FUNDS FOR ELEMENTARY AND SECONDARY**
17 **EDUCATION PROGRAMS.**

18 “(a) CONSOLIDATION OF ADMINISTRATIVE FUNDS.—

19 “(1) IN GENERAL.—A State educational agency
20 may consolidate the amounts specifically made avail-
21 able to such agency for State administration under
22 one or more of the programs under paragraph (2)
23 if such State educational agency can demonstrate
24 that the majority of such agency’s resources are de-
25 rived from non-Federal sources.



VIII-20

1 “(2) APPLICABILITY.—This section applies to
2 any program under this Act under which funds are
3 authorized to be used for administration, and such
4 other programs as the Secretary may designate.

5 “(b) USE OF FUNDS.—

6 “(1) IN GENERAL.—A State educational agency
7 shall use the amount available under this section for
8 the administration of the programs included in the
9 consolidation under subsection (a).

10 “(2) ADDITIONAL USES.—A State educational
11 agency may also use funds available under this sec-
12 tion for administrative activities designed to enhance
13 the effective and coordinated use of funds under pro-
14 grams included in the consolidation under subsection
15 (a), such as—

16 “(A) the coordination of such programs
17 with other Federal and non-Federal programs;

18 “(B) the establishment and operation of
19 peer-review mechanisms under this Act;

20 “(C) the administration of this title;

21 “(D) the dissemination of information re-
22 garding model programs and practices;

23 “(E) technical assistance under any pro-
24 gram under this Act;



VIII-21

1 “(F) State level activities designed to carry
2 out this title;

3 “(G) training personnel engaged in audit
4 and other monitoring activities; and

5 “(H) implementation of the Cooperative
6 Audit Resolution and Oversight Initiative of the
7 Department of Education.

8 “(c) RECORDS.—A State educational agency that
9 consolidates administrative funds under this section shall
10 not be required to keep separate records, by individual
11 program, to account for costs relating to the administra-
12 tion of programs included in the consolidation under sub-
13 section (a).

14 “(d) REVIEW.—To determine the effectiveness of
15 State administration under this section, the Secretary may
16 periodically review the performance of State educational
17 agencies in using consolidated administrative funds under
18 this section and take such steps as the Secretary finds
19 appropriate to ensure the effectiveness of such administra-
20 tion.

21 “(e) UNUSED ADMINISTRATIVE FUNDS.—If a State
22 educational agency does not use all of the funds available
23 to such agency under this section for administration, such
24 agency may use such funds during the applicable period



VIII-22

1 of availability as funds available under one or more pro-
2 grams included in the consolidation under subsection (a).

3 **“SEC. 8202. SINGLE LOCAL EDUCATIONAL AGENCY STATES.**

4 “A State educational agency that also serves as a
5 local educational agency, in such agency’s applications or
6 plans under this Act, shall describe how such agency will
7 eliminate duplication in the conduct of administrative
8 functions.

9 **“SEC. 8203. CONSOLIDATION OF FUNDS FOR LOCAL ADMIN-**
10 **ISTRATION.**

11 “(a) GENERAL AUTHORITY.—In accordance with
12 regulations of the Secretary and for any fiscal year, a local
13 educational agency, with the approval of its State edu-
14 cational agency, may consolidate and use for the adminis-
15 tration of one or more programs under this Act (or such
16 other programs as the Secretary shall designate) not more
17 than the percentage, established in each such program, of
18 the total available for the local educational agency under
19 such programs.

20 “(b) STATE PROCEDURES.—Within one-year from
21 the date of enactment of the No Child Left Behind Act
22 of 2001, a State educational agency shall, in collaboration
23 with local educational agencies in the State, establish pro-
24 cedures for responding to requests from local educational
25 agencies to consolidate administrative funds under sub-



VIII-23

1 section (a) and for establishing limitations on the amount
2 of funds under such programs that may be used for ad-
3 ministration on a consolidated basis.

4 “(c) CONDITIONS.—A local educational agency that
5 consolidates administrative funds under this section for
6 any fiscal year shall not use any other funds under the
7 programs included in the consolidation for administration
8 for that fiscal year.

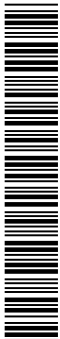
9 “(d) USES OF ADMINISTRATIVE FUNDS.—A local
10 educational agency that consolidates administrative funds
11 under this section may use such consolidated funds for
12 the administration of such programs and for uses, at the
13 school district and school levels, comparable to those de-
14 scribed in section 8201(b)(2).

15 “(e) RECORDS.—A local educational agency that con-
16 solidates administrative funds under this section shall not
17 be required to keep separate records, by individual pro-
18 gram, to account for costs relating to the administration
19 of such programs included in the consolidation.

20 **“SEC. 8204. CONSOLIDATED SET-ASIDE FOR DEPARTMENT**
21 **OF THE INTERIOR FUNDS.**

22 “(a) GENERAL AUTHORITY.—

23 “(1) TRANSFER.—The Secretary shall transfer
24 to the Department of the Interior, as a consolidated
25 amount for covered programs, the Indian education



VIII–24

1 programs under subpart 1 of part B of title III, and
2 the education for homeless children and youth pro-
3 gram under subtitle B of title VII of the Stewart B.
4 McKinney Homeless Assistance Act, the amounts al-
5 lotted to the Department of the Interior under those
6 programs.

7 “(2) AGREEMENT.—(A) The Secretary and the
8 Secretary of the Interior shall enter into an agree-
9 ment, consistent with the requirements of the pro-
10 grams specified in paragraph (1), for the distribu-
11 tion and use of those program funds under terms
12 that the Secretary determines best meet the pur-
13 poses of those programs.

14 “(B) The agreement shall—

15 “(i) set forth the plans of the Secretary of
16 the Interior for the use of the amount trans-
17 ferred and the performance measures to assess
18 program effectiveness, including measurable
19 goals and objectives; and

20 “(ii) be developed in consultation with In-
21 dian tribes.

22 “(b) ADMINISTRATION.—The Department of the In-
23 terior may use not more than 1.5 percent of the funds
24 consolidated under this section for such department’s



VIII-25

1 costs related to the administration of the funds trans-
2 ferred under this section.

3 **“PART C—COORDINATION OF PROGRAMS; CON-**
4 **SOLIDATED STATE AND LOCAL PLANS AND**
5 **APPLICATIONS**

6 **“SEC. 8301. PURPOSE.**

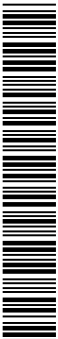
7 “The purposes of this part are to improve teaching
8 and learning through greater coordination between pro-
9 grams and to provide greater flexibility to State and local
10 authorities by allowing the consolidation of State and local
11 plans, applications, and reporting.

12 **“SEC. 8302. OPTIONAL CONSOLIDATED STATE PLANS OR**
13 **APPLICATIONS.**

14 “(a) GENERAL AUTHORITY.—

15 “(1) SIMPLIFICATION.—In order to simplify ap-
16 plication requirements and reduce the burden for
17 States under this Act, the Secretary, in accordance
18 with subsection (b), shall establish procedures and
19 criteria under which a Governor and State edu-
20 cational agency may submit a consolidated State
21 plan or a consolidated State application meeting the
22 requirements of this section for—

23 “(A) any programs under this Act in which
24 the State participates; and



VIII-26

1 “(B) such other programs as the Secretary
2 may designate.

3 “(2) CONSOLIDATED APPLICATIONS AND
4 PLANS.—A Governor and State educational agency
5 that submits a consolidated State plan or a consoli-
6 dated State application under this section shall not
7 be required to submit a separate State plan or appli-
8 cation for a program included in the consolidated
9 State plan or application.

10 “(b) COLLABORATION.—

11 “(1) IN GENERAL.—In establishing criteria and
12 procedures under this section, the Secretary shall
13 collaborate with Governors, State educational agen-
14 cies and, as appropriate, with other State agencies,
15 local educational agencies, public and private non-
16 profit agencies, organizations, and institutions, pri-
17 vate schools, and representatives of parents, stu-
18 dents, and teachers.

19 “(2) CONTENTS.—Through the collaborative
20 process described in paragraph (1), the Secretary
21 shall establish, for each program under the Act to
22 which this section applies, the descriptions, informa-
23 tion, assurances, and other material required to be
24 included in a consolidated State plan or consolidated
25 State application.



VIII-27

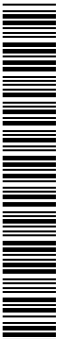
1 “(3) NECESSARY MATERIALS.—The Secretary
2 shall require only descriptions, information, assur-
3 ances, and other materials that are absolutely nec-
4 essary for the consideration of the consolidated State
5 plan or consolidated State application.

6 **“SEC. 8303. CONSOLIDATED REPORTING.**

7 “In order to simplify reporting requirements and re-
8 duce reporting burdens, the Secretary shall establish pro-
9 cedures and criteria under which a Governor and State
10 educational agency may submit a consolidated State an-
11 nual report. Such report shall contain information about
12 the programs included in the report, including the State’s
13 performance under those programs, and other matters as
14 the Secretary determines, such as monitoring activities.
15 Such a report shall take the place of separate individual
16 annual reports for the programs subject to it.

17 **“SEC. 8304. GENERAL APPLICABILITY OF STATE EDU-**
18 **CATIONAL AGENCY ASSURANCES.**

19 “(a) ASSURANCES.—A Governor and State edu-
20 cational agency that submits a consolidated State plan or
21 consolidated State application under this Act, whether
22 separately or under section 8302, shall have on file with
23 the Secretary a single set of assurances, applicable to each
24 program for which such plan or application is submitted,
25 that provides that—



VIII-28

1 “(1) each such program will be administered in
2 accordance with all applicable statutes, regulations,
3 program plans, and applications;

4 “(2)(A) the control of funds provided under
5 each such program and title to property acquired
6 with program funds will be in a public agency, in a
7 nonprofit private agency, institution, or organiza-
8 tion, or in an Indian tribe if the law authorizing the
9 program provides for assistance to such entities; and

10 “(B) the public agency, nonprofit private agen-
11 cy, institution, or organization, or Indian tribe will
12 administer such funds and property to the extent re-
13 quired by the authorizing law;

14 “(3) the State will adopt and use proper meth-
15 ods of administering each such program, including—

16 “(A) the enforcement of any obligations
17 imposed by law on agencies, institutions, orga-
18 nizations, and other recipients responsible for
19 carrying out each program;

20 “(B) the correction of deficiencies in pro-
21 gram operations that are identified through au-
22 dits, monitoring, or evaluation; and

23 “(C) the adoption of written procedures for
24 the receipt and resolution of complaints alleging



VIII-29

1 violations of law in the administration of such
2 programs;

3 “(4) the State will cooperate in carrying out
4 any evaluation of each such program conducted by
5 or for the Secretary or other Federal officials;

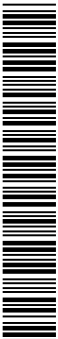
6 “(5) the State will use such fiscal control and
7 fund accounting procedures as will ensure proper
8 disbursement of, and accounting for, Federal funds
9 paid to the State under each such program;

10 “(6) the State will—

11 “(A) make reports to the Secretary as may
12 be necessary to enable the Secretary to perform
13 the Secretary’s duties under each such pro-
14 gram; and

15 “(B) maintain such records, provide such
16 information to the Secretary, and afford access
17 to the records as the Secretary may find nec-
18 essary to carry out the Secretary’s duties; and

19 “(7) before the plan or application was sub-
20 mitted to the Secretary, the State has afforded a
21 reasonable opportunity for public comment on the
22 plan or application and has considered such com-
23 ment.



VIII-30

1 “(b) GEPA PROVISION.—Section 441 of the General
2 Education Provisions Act shall not apply to programs
3 under this Act.

4 **“SEC. 8305. CONSOLIDATED LOCAL PLANS OR APPLICA-**
5 **TIONS.**

6 “(a) GENERAL AUTHORITY.—A local educational
7 agency receiving funds under more than one program
8 under this Act may submit plans or applications to the
9 Governor and State educational agency under such pro-
10 grams on a consolidated basis.

11 “(b) REQUIRED CONSOLIDATED PLANS OR APPLICA-
12 TIONS.—A State that has an approved consolidated State
13 plan or application under section 8302 may require local
14 educational agencies in the State receiving funds under
15 more than one program included in the consolidated State
16 plan or consolidated State application to submit consoli-
17 dated local plans or applications under such programs, but
18 may not require such agencies to submit separate plans.

19 “(c) COLLABORATION.—A Governor and State edu-
20 cational agency shall collaborate with local educational
21 agencies in the State in establishing procedures for the
22 submission of the consolidated State plans or consolidated
23 State applications under this section.

24 “(d) NECESSARY MATERIALS.—The State shall re-
25 quire only descriptions, information, assurances, and other



VIII-31

1 material that are absolutely necessary for the consider-
2 ation of the local educational agency plan or application.

3 **“SEC. 8306. OTHER GENERAL ASSURANCES.**

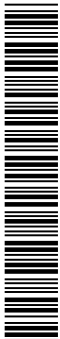
4 “(a) ASSURANCES.—Any applicant other than a
5 State that submits a plan or application under this Act,
6 shall have on file with the State a single set of assurances,
7 applicable to each program for which a plan or application
8 is submitted, that provides that—

9 “(1) each such program will be administered in
10 accordance with all applicable statutes, regulations,
11 program plans, and applications;

12 “(2)(A) the control of funds provided under
13 each such program and title to property acquired
14 with program funds will be in a public agency or in
15 a nonprofit private agency, institution, organization,
16 or Indian tribe, if the law authorizing the program
17 provides for assistance to such entities; and

18 “(B) the public agency, nonprofit private
19 agency, institution, or organization, or Indian
20 tribe will administer such funds and property to
21 the extent required by the authorizing statutes;

22 “(3) the applicant will adopt and use proper
23 methods of administering each such program,
24 including—



VIII-32

1 “(A) the enforcement of any obligations
2 imposed by law on agencies, institutions, orga-
3 nizations, and other recipients responsible for
4 carrying out each program; and

5 “(B) the correction of deficiencies in pro-
6 gram operations that are identified through au-
7 dits, monitoring, or evaluation;

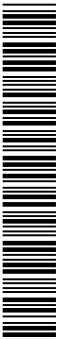
8 “(4) the applicant will cooperate in carrying out
9 any evaluation of each such program conducted by
10 or for the State educational agency, the Secretary or
11 other Federal officials;

12 “(5) the applicant will use such fiscal control
13 and fund accounting procedures as will ensure prop-
14 er disbursement of, and accounting for, Federal
15 funds paid to such applicant under each such pro-
16 gram;

17 “(6) the applicant will—

18 “(A) make reports to the Governor and
19 State educational agency and the Secretary as
20 may be necessary to enable such agency and the
21 Secretary to perform their duties under each
22 such program; and

23 “(B) maintain such records, provide such
24 information, and afford access to the records as
25 the Governor and State educational agency or



VIII–33

1 the Secretary may find necessary to carry out
2 the State’s or the Secretary’s duties; and

3 “(7) before the application was submitted, the
4 applicant afforded a reasonable opportunity for pub-
5 lic comment on the application and has considered
6 such comment.

7 “(b) GEPA PROVISION.—Section 442 of the General
8 Education Provisions Act shall not apply to programs
9 under this Act.

10 **“PART D—WAIVERS**

11 **“SEC. 8401. WAIVERS OF STATUTORY AND REGULATORY RE-**
12 **QUIREMENTS.**

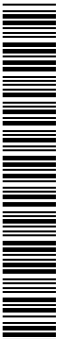
13 “(a) IN GENERAL.—Except as provided in subsection
14 (c), the Secretary may waive any statutory or regulatory
15 requirement of this Act or the Carl D. Perkins Vocational
16 and Technical Education Act of 1998 for a State edu-
17 cational agency, local educational agency, Indian tribe, or
18 school through a local educational agency, that—

19 “(1) receives funds under a program authorized
20 by this Act; and

21 “(2) requests a waiver under subsection (b).

22 “(b) REQUEST FOR WAIVER.—

23 “(1) IN GENERAL.—A State educational agen-
24 cy, local educational agency, or Indian tribe which



VIII-34

1 desires a waiver shall submit a waiver application to
2 the Secretary that—

3 “(A) indicates each Federal program af-
4 fected and each statutory or regulatory require-
5 ment requested to be waived;

6 “(B) describes the purpose and overall ex-
7 pected results of waiving each such require-
8 ment;

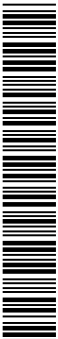
9 “(C) describes, for each school year, spe-
10 cific, measurable, educational goals for the
11 State educational agency and for each local
12 educational agency, Indian tribe, or school that
13 would be affected by the wavier;

14 “(D) explains why the waiver will assist
15 the State educational agency and each affected
16 local educational agency, Indian tribe, or school
17 in reaching such goals.

18 “(2) ADDITIONAL INFORMATION.—Such
19 requests—

20 “(A) may provide for waivers of require-
21 ments applicable to State educational agencies,
22 local educational agencies, Indian tribes, and
23 schools; and

24 “(B) shall be developed and submitted—



VIII-35

1 “(i)(I) by local educational agencies
2 (on behalf of such agencies and schools) to
3 State educational agencies; and

4 “(II) by State educational agencies
5 (on behalf of, and based upon the requests
6 of, local educational agencies) to the Sec-
7 retary; or

8 “(ii) by Indian tribes (on behalf of
9 schools operated by such tribes) to the Sec-
10 retary.

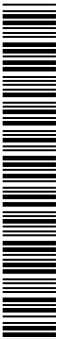
11 “(3) GENERAL REQUIREMENTS.—

12 “(A) In the case of a waiver request sub-
13 mitted by a State educational agency acting in
14 its own behalf, the State educational agency
15 shall—

16 “(i) provide all interested local edu-
17 cational agencies in the State with notice
18 and a reasonable opportunity to comment
19 on the request;

20 “(ii) submit the comments to the Sec-
21 retary; and

22 “(iii) provide notice and information
23 to the public regarding the waiver request
24 in the manner that the applying agency



VIII-36

1 customarily provides similar notices and
2 information to the public.

3 “(B) In the case of a waiver request sub-
4 mitted by a local educational agency that re-
5 ceives funds under this Act—

6 “(i) such request shall be reviewed by
7 the State educational agency and be ac-
8 companied by the comments, if any, of
9 such State educational agency; and

10 “(ii) notice and information regarding
11 the waiver request shall be provided to the
12 public by the agency requesting the waiver
13 in the manner that such agency custom-
14 arily provides similar notices and informa-
15 tion to the public.

16 “(c) RESTRICTIONS.—The Secretary shall not waive
17 under this section any statutory or regulatory require-
18 ments relating to—

19 “(1) the allocation or distribution of funds to
20 States, local educational agencies, or other recipients
21 of funds under this Act;

22 “(2) maintenance of effort;

23 “(3) comparability of services;

24 “(4) use of Federal funds to supplement, not
25 supplant, non-Federal funds;



VIII-37

1 “(5) equitable participation of private school
2 students and teachers;

3 “(6) parental participation and involvement;

4 “(7) applicable civil rights requirements;

5 “(8) the requirement for a charter school under
6 part B of title IV; or

7 “(9) the prohibitions regarding—

8 “(A) State aid in section 8502;

9 “(B) use of funds for religious worship or
10 instruction in section 8507; and

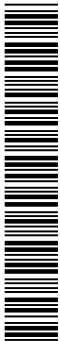
11 “(C) activities in section 8514.

12 “(d) DURATION AND EXTENSION OF WAIVER.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), the duration of a waiver approved by the
15 Secretary under this section may be for a period not
16 to exceed 5 years.

17 “(2) EXTENSION.—The Secretary may extend
18 the period described in paragraph (1) if the Sec-
19 retary determines that—

20 “(A) the waiver has been effective in ena-
21 bling the State or affected recipients to carry
22 out the activities for which the waiver was re-
23 quested and the waiver has contributed to im-
24 proved student performance; and



VIII-38

1 “(B) such extension is in the public inter-
2 est.

3 “(e) REPORTS.—

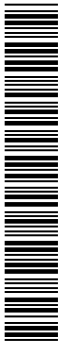
4 “(1) LOCAL WAIVER.—A local educational agen-
5 cy that receives a waiver under this section shall at
6 the end of the second year for which a waiver is re-
7 ceived under this section, and each subsequent year,
8 submit a report to the State educational agency
9 that—

10 “(A) describes the uses of such waiver by
11 such agency or by schools;

12 “(B) describes how schools continued to
13 provide assistance to the same populations
14 served by the programs for which waivers are
15 requested; and

16 “(A) evaluates the progress of such agency
17 and of schools in improving the quality of in-
18 struction or the academic performance of stu-
19 dents.

20 “(2) STATE WAIVER.—A State educational
21 agency that receives reports required under para-
22 graph (1) shall annually submit a report to the Sec-
23 retary that is based on such reports and contains
24 such information as the Secretary may require.



VIII-39

1 “(3) INDIAN TRIBE WAIVER.—An Indian tribe
2 that receives a waiver under this section shall annu-
3 ally submit a report to the Secretary that—

4 “(A) describes the uses of such waiver by
5 schools operated by such tribe; and

6 “(B) evaluates the progress of such schools
7 in improving the quality of instruction or the
8 academic performance of students.

9 “(4) REPORT TO CONGRESS.—Beginning in fis-
10 cal year 2002 and each subsequent year, the Sec-
11 retary shall submit to the Committee on Education
12 and the Workforce of the House of Representatives
13 and the Committee on Health, Education, Labor
14 and Pensions of the Senate a report—

15 “(A) summarizing the uses of waivers by
16 State educational agencies, local educational
17 agencies, Indian tribes, and schools; and

18 “(B) describing whether such waivers—

19 “(i) increased the quality of instruc-
20 tion to students; or

21 “(ii) improved the academic perform-
22 ance of students.

23 “(f) TERMINATION OF WAIVERS.—The Secretary
24 shall terminate a waiver under this section if the Secretary
25 determines, after notice and an opportunity for a hearing,



VIII-40

1 that the performance of the State or other recipient af-
2 fected by the waiver has been inadequate to justify a con-
3 tinuation of the waiver or if the waiver is no longer nec-
4 essary to achieve its original purposes.

5 “(g) PUBLICATION.—A notice of the Secretary’s deci-
6 sion to grant each waiver under subsection (a) shall be
7 published in the Federal Register and the Secretary shall
8 provide for the dissemination of such notice to State edu-
9 cational agencies, interested parties, including educators,
10 parents, students, advocacy and civil rights organizations,
11 and the public.

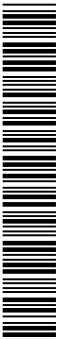
12 **“PART E—UNIFORM PROVISIONS**

13 **“SEC. 8501. MAINTENANCE OF EFFORT.**

14 “(a) IN GENERAL.—A local educational agency may
15 receive funds under a covered program for any fiscal year
16 only if the State educational agency finds that either the
17 combined fiscal effort per student or the aggregate ex-
18 penditures of such agency and the State with respect to
19 the provision of free public education by such agency for
20 the preceding fiscal year was not less than 90 percent of
21 such combined fiscal effort or aggregate expenditures for
22 the second preceding fiscal year.

23 “(b) REDUCTION IN CASE OF FAILURE TO MEET.—

24 “(1) IN GENERAL.—The State educational
25 agency shall reduce the amount of the allocation of



VIII-41

1 funds under a covered program in any fiscal year in
2 the exact proportion to which a local educational
3 agency fails to meet the requirement of subsection
4 (a) of this section by falling below 90 percent of
5 both the combined fiscal effort per student and ag-
6 gregate expenditures (using the measure most favor-
7 able to such local agency).

8 “(2) SPECIAL RULE.—No such lesser amount
9 shall be used for computing the effort required
10 under subsection (a) of this section for subsequent
11 years.

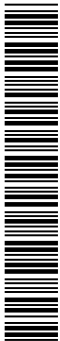
12 “(c) WAIVER.—The Secretary may waive the require-
13 ments of this section if the Secretary determines that such
14 a waiver would be equitable due to—

15 “(1) exceptional or uncontrollable circumstances
16 such as a natural disaster; or

17 “(2) a precipitous decline in the financial re-
18 sources of the local educational agency.

19 **“SEC. 8502. PROHIBITION REGARDING STATE AID.**

20 “A State shall not take into consideration payments
21 under this Act (other than under title VI) in determining
22 the eligibility of any local educational agency in such State
23 for State aid, or the amount of State aid, with respect
24 to free public education of children.



VIII-42

1 **“SEC. 8503. PARTICIPATION BY PRIVATE SCHOOL CHIL-**
2 **DREN AND TEACHERS.**

3 **“(a) PRIVATE SCHOOL PARTICIPATION.—**

4 **“(1) IN GENERAL.—**Except as otherwise pro-
5 vided in this Act, to the extent consistent with the
6 number of eligible children in areas served by a
7 State educational agency, local educational agency,
8 educational service agency, consortium of such agen-
9 cies, or another entity receiving financial assistance
10 under a program specified in subsection (b), who are
11 enrolled in private elementary and secondary schools
12 in areas served by such agency, consortium or entity,
13 such agency, consortium or entity shall, after timely
14 and meaningful consultation with appropriate pri-
15 vate school officials, provide such children and their
16 teachers or other educational personnel, on an equi-
17 table basis, special educational services or other ben-
18 efits that address their needs under such program.

19 **“(2) SECULAR, NEUTRAL, AND NONIDEOLOG-**
20 **ICAL SERVICES OR BENEFITS.—**Educational services
21 or other benefits, including materials and equipment,
22 provided under this section, shall be secular, neutral,
23 and nonideological.

24 **“(3) SPECIAL RULE.—**Educational services and
25 other benefits provided under this section for such
26 private school children, teachers, and other edu-



VIII-43

1 cational personnel shall be equitable in comparison
2 to services and other benefits for public school chil-
3 dren, teachers, and other educational personnel par-
4 ticipating in such program and shall be provided in
5 a timely manner.

6 “(4) EXPENDITURES.—Expenditures for edu-
7 cational services and other benefits provided under
8 this section to eligible private school children, their
9 teachers, and other educational personnel serving
10 such children shall be equal, taking into account the
11 number and educational needs of the children to be
12 served, to the expenditures for participating public
13 school children.

14 “(5) PROVISION OF SERVICES.—Such agency,
15 consortium or entity described in subsection (a)(1)
16 of this section may provide such services directly or
17 through contracts with public and private agencies,
18 organizations, and institutions.

19 “(b) APPLICABILITY.—

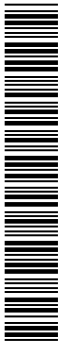
20 “(1) IN GENERAL.—This section applies to pro-
21 grams under—

22 “(A) part B, subpart 1 of title I;

23 “(B) part C of title I;

24 “(C) part A of title II;

25 “(D) part A of title III.



VIII-44

1 “(E) part A of title V; and

2 “(F) part B of title V;

3 “(2) DEFINITION.—For the purposes of this
4 section, the term ‘eligible children’ means children
5 eligible for services under a program described in
6 paragraph (1).

7 “(c) CONSULTATION.—

8 “(1) IN GENERAL.—To ensure timely and
9 meaningful consultation, a State educational agency,
10 local educational agency, educational service agency,
11 consortium of such agencies or entity shall consult
12 with appropriate private school officials during the
13 design and development of the programs under this
14 Act, on issues such as—

15 “(A) how the children’s needs will be iden-
16 tified;

17 “(B) what services will be offered;

18 “(C) how, where, and by whom the services
19 will be provided;

20 “(D) how the services will be assessed and
21 how the results of the assessment will be used
22 to improve such services;

23 “(E) the size and scope of the equitable
24 services to be provided to the eligible private
25 school children, teachers, and other educational



VIII-45

1 personnel and the amount of funds available for
2 such services; and

3 “(F) how and when the agency, consor-
4 tium, or entity will make decisions about the
5 delivery of services, including a thorough con-
6 sideration and analysis of the views of the pri-
7 vate school officials on the provision of contract
8 services through potential third party providers.

9 “(2) DISAGREEMENT.—If the agency, consor-
10 tium or entity disagrees with the views of the private
11 school officials on the provision of services through
12 a contract, the agency, consortium, or entity shall
13 provide in writing to such private school officials an
14 analysis of the reasons why the local educational
15 agency has chosen not to use a contractor.

16 “(3) TIMING.—Such consultation shall occur
17 before the agency, consortium, or entity makes any
18 decision that affects the opportunities of eligible pri-
19 vate school children, teachers, and other educational
20 personnel to participate in programs under this Act,
21 and shall continue throughout the implementation
22 and assessment of activities under this section.

23 “(4) DISCUSSION REQUIRED.—Such consulta-
24 tion shall include a discussion of service delivery
25 mechanisms that the agency, consortium, or entity



VIII-46

1 could use to provide equitable services to eligible pri-
2 vate school children, teachers, administrators, and
3 other staff.

4 “(d) PUBLIC CONTROL OF FUNDS.—

5 “(1) IN GENERAL.—The control of funds used
6 to provide services under this section, and title to
7 materials, equipment, and property purchased with
8 such funds, shall be in a public agency for the uses
9 and purposes provided in this Act, and a public
10 agency shall administer such funds and property.

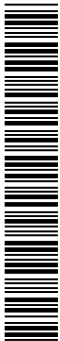
11 “(2) PROVISION OF SERVICES.—

12 “(A) The provision of services under this
13 section shall be provided—

14 “(i) by employees of a public agency;
15 or

16 “(ii) through contract by such public
17 agency with an individual, association,
18 agency, organization, or other entity.

19 “(B) In the provision of such services, such
20 employee, person, association, agency, organiza-
21 tion or other entity shall be independent of such
22 private school and of any religious organization,
23 and such employment or contract shall be under
24 the control and supervision of such public agen-
25 cy.



VIII-47

1 “(C) Funds used to provide services under
2 this section shall not be commingled with non-
3 Federal funds.

4 **“SEC. 8504. STANDARDS FOR BY-PASS.**

5 “If, by reason of any provision of law, a State edu-
6 cational agency, local educational agency, educational
7 service agency, consortium, or other entity of such agen-
8 cies, is prohibited from providing for the participation in
9 programs of children enrolled in, or teachers or other edu-
10 cational personnel from, private elementary and secondary
11 schools, on an equitable basis, or if the Secretary deter-
12 mines that such agency consortium or entity has substan-
13 tially failed or is unwilling to provide for such participa-
14 tion, as required by section 8503, the Secretary shall—

15 “(1) waive the requirements of that section for
16 such agency, consortium, or entity;

17 “(2) arrange for the provision of equitable serv-
18 ices to such children, teachers, or other educational
19 personnel through arrangements that shall be sub-
20 ject to the requirements of this section and of sec-
21 tions 8503, 8505, and 8506; and

22 “(3) in making the determination, consider one
23 or more factors, including the quality, size, scope, lo-
24 cation of the program and the opportunity of private



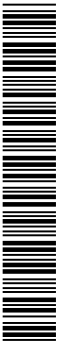
VIII-48

1 school children, teachers, and other educational per-
2 sonnel to participate.

3 **“SEC. 8505. COMPLAINT PROCESS FOR PARTICIPATION OF**
4 **PRIVATE SCHOOL CHILDREN.**

5 “(a) PROCEDURES FOR COMPLAINTS.—The Sec-
6 retary shall develop and implement written procedures for
7 receiving, investigating, and resolving complaints from
8 parents, teachers, or other individuals and organizations
9 concerning violations of section 8503 by a State edu-
10 cational agency, local educational agency, educational
11 service agency, consortium of such agencies or entity.
12 Such individual or organization shall submit such com-
13 plaint to the State educational agency for a written resolu-
14 tion by the State educational agency within a reasonable
15 period of time.

16 “(b) APPEALS TO SECRETARY.—Such resolution may
17 be appealed by an interested party to the Secretary not
18 later than 30 days after the State educational agency re-
19 solves the complaint or fails to resolve the complaint with-
20 in a reasonable period of time. Such appeal shall be ac-
21 companied by a copy of the State educational agency’s res-
22 olution, and a complete statement of the reasons sup-
23 porting the appeal. The Secretary shall investigate and re-
24 solve each such appeal not later than 120 days after re-
25 ceipt of the appeal.



VIII-49

1 **“SEC. 8506. BY-PASS DETERMINATION PROCESS.**2 **“(a) REVIEW.—**3 **“(1) IN GENERAL.—**

4 “(A) The Secretary shall not take any final
5 action under section 8504 until the State edu-
6 cational agency, local educational agency, edu-
7 cational service agency, consortium of such
8 agencies or entity affected by such action has
9 had an opportunity, for not less than 45 days
10 after receiving written notice thereof, to submit
11 written objections and to appear before the Sec-
12 retary to show cause why that action should not
13 be taken.

14 “(B) Pending final resolution of any inves-
15 tigation or complaint that could result in a de-
16 termination under this section, the Secretary
17 may withhold from the allocation of the affected
18 State or local educational agency the amount
19 estimated by the Secretary to be necessary to
20 pay the cost of those services.

21 **“(2) PETITION FOR REVIEW.—**

22 “(A) If such affected agency consortium or
23 entity is dissatisfied with the Secretary’s final
24 action after a proceeding under paragraph (1),
25 such agency consortium or entity may, within
26 60 days after notice of such action, file with the



VIII-50

1 United States court of appeals for the circuit in
2 which such State is located a petition for review
3 of that action.

4 “(B) A copy of the petition shall be forth-
5 with transmitted by the clerk of the court to the
6 Secretary.

7 “(C) The Secretary upon receipt of the
8 copy of the petition shall file in the court the
9 record of the proceedings on which the Sec-
10 retary based this action, as provided in section
11 2112 of title 28, United States Code.

12 “(3) FINDINGS OF FACT.—

13 “(A) The findings of fact by the Secretary,
14 if supported by substantial evidence, shall be
15 conclusive, but the court, for good cause shown,
16 may remand the case to the Secretary to take
17 further evidence and the Secretary may then
18 make new or modified findings of fact and may
19 modify the Secretary’s previous action, and
20 shall file in the court the record of the further
21 proceedings.

22 “(B) Such new or modified findings of fact
23 shall likewise be conclusive if supported by sub-
24 stantial evidence.

25 “(4) JURISDICTION.—



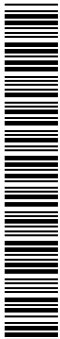
VIII-51

1 “(A) Upon the filing of such petition, the
2 court shall have jurisdiction to affirm the action
3 of the Secretary or to set such action aside, in
4 whole or in part.

5 “(B) The judgment of the court shall be
6 subject to review by the Supreme Court of the
7 United States upon certiorari or certification as
8 provided in section 1254 of title 28, United
9 States Code.

10 “(b) DETERMINATION.—Any determination by the
11 Secretary under this section shall continue in effect until
12 the Secretary determines, in consultation with such agen-
13 cy, consortium or entity and representatives of the af-
14 fected private school children, teachers, or other edu-
15 cational personnel that there will no longer be any failure
16 or inability on the part of such agency or consortium to
17 meet the applicable requirements of section 8503 or any
18 other provision of this Act.

19 “(c) PAYMENT FROM STATE ALLOTMENT.—When
20 the Secretary arranges for services pursuant to this sec-
21 tion, the Secretary shall, after consultation with the ap-
22 propriate public and private school officials, pay the cost
23 of such services, including the administrative costs of ar-
24 ranging for those services, from the appropriate allocation
25 or allocations under this Act.



VIII-52

1 “(d) PRIOR DETERMINATION.—Any by-pass deter-
2 mination by the Secretary under this Act as in effect on
3 the day preceding the date of enactment of the No Child
4 Left Behind Act of 2001 shall remain in effect to the ex-
5 tent the Secretary determines that such determination is
6 consistent with the purpose of this section.

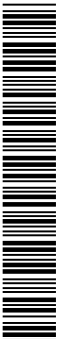
7 **“SEC. 8507. PROHIBITION AGAINST FUNDS FOR RELIGIOUS**
8 **WORSHIP OR INSTRUCTION.**

9 “(a) IN GENERAL.—Nothing contained in this Act
10 shall be construed to authorize the making of any payment
11 under this Act for religious worship or instruction.

12 “(b) INAPPLICABILITY.—Subsection (a) shall not be
13 construed to prohibit the use of funds made available to
14 parents of eligible children for sectarian educational pur-
15 poses under private school choice provisions of this Act,
16 or to require an eligible private institution to remove reli-
17 gious art, icons, scripture, or other symbols.

18 **“SEC. 8508. APPLICABILITY.**

19 “Nothing in this Act shall be construed to affect
20 home schools nor shall any home schooled student be re-
21 quired to participate in any assessment referenced in this
22 Act.



VIII-53

1 **“SEC. 8509. PRIVATE SCHOOLS.**

2 “Nothing in this Act shall be construed to affect any
3 private school that does not receive funds or services under
4 this Act.

5 **“SEC. 8510. PRIVACY OF ASSESSMENT RESULTS.**

6 “Any results from individual assessments referenced
7 in this Act which become part of the education records
8 of the student shall have the protections as provided in
9 section 444 of the General Education Provisions Act.

10 **“SEC. 8511. GENERAL PROVISION REGARDING NON-**
11 **RECIPIENT NONPUBLIC SCHOOLS.**

12 “Nothing in this Act or any other Act administered
13 by the Department shall be construed to permit, allow,
14 encourage, or authorize any Federal control over any as-
15 pect of any private, religious, or home school, whether or
16 not a home school is treated as a private school or home
17 school under State law. This section shall not be construed
18 to bar private, religious, or home schools from participa-
19 tion in programs or services under this Act or any other
20 Act administered by the Department.

21 **“SEC. 8512. SCHOOL PRAYER.**

22 “Notwithstanding any provision of law, no funds
23 made available through the Department of Education
24 under this Act, or any other Act, shall be available to any
25 State or local educational agency which has a policy of
26 denying or which effectively prevents participation in, con-



VIII-54

1 stitutionally protected prayer in public schools by individ-
2 uals on a voluntary basis. Neither the United States nor
3 any State nor any local educational agency shall require
4 any person to participate in prayer or influence the form
5 or content of any constitutionally protected prayer in such
6 public schools.

7 **“SEC. 8513. ATTORNEYS FEES.**

8 “Notwithstanding any other provision of Federal law,
9 a local educational agency or public elementary or sec-
10 ondary school may use not more than 20 percent of its
11 administrative funds from any program under this Act for
12 payment of attorneys fees and related legal services in the
13 defense of any legal action, brought against a local edu-
14 cational agency, public elementary or secondary school, or
15 agent of any of such entities, claiming such agency, school,
16 or agent violated the constitutional prohibition against the
17 establishment of religion by permitting, facilitating, or
18 accommodating—

19 “(1) a student’s religious expression; or

20 “(2) the design or construction of any memorial
21 which includes religious symbols, motifs, or saying
22 as part of a memorial placed on the campus of a
23 public elementary or secondary school in order to
24 honor the memory of a person slain on that campus.



VIII-55

1 **“SEC. 8514. GENERAL PROHIBITIONS.**

2 “(a) PROHIBITION.—None of the funds authorized
3 under this Act shall be used—

4 “(1) to develop or distribute materials, or oper-
5 ate programs or courses of instruction directed at
6 youth that are designed to promote or encourage,
7 sexual activity, whether homosexual or heterosexual;

8 “(2) to distribute or to aid in the distribution
9 by any organization of legally obscene materials to
10 minors on school grounds;

11 “(3) to provide sex education or HIV preven-
12 tion education in schools unless such instruction is
13 age appropriate and emphasizes the health benefits
14 of abstinence; or

15 “(4) to operate a program of contraceptive dis-
16 tribution in schools.

17 “(b) LOCAL CONTROL.—Nothing in this section shall
18 be construed to—

19 “(1) authorize an officer or employee of the
20 Federal Government to mandate, direct, review, or
21 control a State, local educational agency, or schools’
22 instructional content, curriculum, and related activi-
23 ties;

24 “(2) limit the application of the General Edu-
25 cation Provisions Act (20 U.S.C.A. 1221 et seq.);



VIII-56

1 “(3) require the distribution of scientifically or
2 medically false or inaccurate materials or to prohibit
3 the distribution of scientifically or medically true or
4 accurate materials; or

5 “(4) create any legally enforceable right.

6 **“SEC. 8515. PROHIBITION ON FEDERAL MANDATES, DIREC-**
7 **TION, AND CONTROL.**

8 “(a) GENERAL PROHIBITION.—Nothing in this Act
9 shall be construed to authorize an officer or employee of
10 the Federal Government to mandate, direct, or control a
11 State, local educational agency, or school’s curriculum,
12 program of instruction, or allocation of State or local re-
13 sources, or mandate a State or any subdivision thereof to
14 spend any funds or incur any costs not paid for under
15 this Act.

16 “(b) PROHIBITION OF FEDERAL MANDATES, DIREC-
17 TION, OR CONTROL.—Nothing in this Act shall be con-
18 strued to authorize an officer or employee of the Federal
19 Government to mandate, direct, or control a State, local
20 educational agency, or school’s specific instructional con-
21 tent or pupil performance standards and assessments, cur-
22 riculum, or program of instruction as a condition of eligi-
23 bility to receive funds under this Act.



VIII-57

1 “(c) EQUALIZED SPENDING.—Nothing in this Act
2 shall be construed to mandate equalized spending per
3 pupil for a State, local educational agency, or school.

4 “(d) BUILDING STANDARDS.—Nothing in this Act
5 shall be construed to mandate national school building
6 standards for a State, local agency, or school.

7 **“SEC. 8516. RULEMAKING.**

8 “The Secretary shall issue regulations under this Act
9 only to the extent that such regulations are necessary to
10 ensure that there is compliance with the specific require-
11 ments and assurances required by this Act.

12 **“SEC. 8517. REPORT.**

13 “The Secretary shall report to the Congress not later
14 than 180 days after the date of enactment of the No Child
15 Left Behind Act of 2001 regarding how the Secretary
16 shall ensure that audits conducted by Department employ-
17 ees of activities assisted under this Act comply with
18 changes to this Act made by the No Child Left Behind
19 Act of 2001, particularly with respect to permitting chil-
20 dren with similar educational needs to be served in the
21 same educational settings, where appropriate.

22 **“SEC. 8518. REQUIRED APPROVAL OR CERTIFICATION PRO-**
23 **HIBITED.**

24 “(a) IN GENERAL.—Notwithstanding any other pro-
25 vision of Federal law, no State shall be required to have



VIII–58

1 content standards or student achievement standards ap-
2 proved or certified by the Federal Government, in order
3 to receive assistance under this Act.

4 “(b) CONSTRUCTION.—Nothing in this section shall
5 be construed to affect requirements under title I of this
6 Act.

7 **“SEC. 8519. PROHIBITION ON ENDORSEMENT OF CUR-**
8 **RICULUM.**

9 “Notwithstanding any other prohibition of Federal
10 law, no funds provided to the Department of Education
11 or to any applicable program may be used by the Depart-
12 ment to endorse, approve, or sanction any curriculum de-
13 signed to be used in an elementary or secondary school.

14 **“SEC. 8520. RULE OF CONSTRUCTION ON PERSONALLY**
15 **IDENTIFIABLE INFORMATION.**

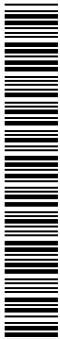
16 “Nothing in this Act shall be construed to permit the
17 development of a national database of personally identifi-
18 able information on individuals involved in studies or in
19 data collection efforts under this Act.

20 **“PART F—SENSE OF CONGRESS**

21 **“SEC. 8601. PAPERWORK REDUCTION.**

22 “(a) FINDINGS.—The Congress finds that—

23 “(1) instruction and other classroom activities
24 provide the greatest opportunity for students, espe-



VIII-59

1 cially at-risk and disadvantaged students, to attain
2 high standards and achieve academic success;

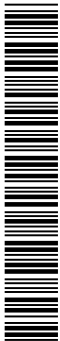
3 “(2) one of the greatest obstacles to estab-
4 lishing an effective, classroom-centered education
5 system is the cost of paperwork compliance;

6 “(3) paperwork places a burden on teachers
7 and administrators who must complete Federal and
8 State forms to apply for Federal funds and absorbs
9 time and money which otherwise would be spent on
10 students;

11 “(4) the Education at a Crossroads Report re-
12 leased in 1998 by the Education Subcommittee on
13 Oversight and Investigations states that require-
14 ments by the Department of Education result in
15 more than \$48,600,000 hours of paperwork per
16 year; and

17 “(5) paperwork distracts from the mission of
18 schools, encumbers teachers, and administrators
19 with nonacademic responsibilities, and competes with
20 teaching and classroom activities which promote
21 learning and achievement.

22 “(b) SENSE OF CONGRESS.—It is the sense of Con-
23 gress that Federal and State educational agencies should
24 reduce the paperwork requirements placed on schools,
25 teachers, principles, and other administrators.



VIII-60

1 **“SEC. 8602. PROHIBITION ON MANDATORY NATIONAL CER-**
2 **TIFICATION OF TEACHERS AND PARA-**
3 **PROFESSIONALS.**

4 “(a) PROHIBITION ON MANDATORY TESTING OR
5 CERTIFICATION.—Notwithstanding any other provision of
6 law, the Secretary is prohibited from using Federal funds
7 to plan, develop, implement, or administer any mandatory
8 national teacher or paraprofessional test or certification.

9 “(b) PROHIBITION ON WITHHOLDING FUNDS.—The
10 Secretary is prohibited from withholding funds from any
11 State or local educational agency if such State or local
12 educational agency fails to adopt a specific method of
13 teacher or paraprofessional certification.

14 **“SEC. 8603. PROHIBITION ON FEDERALLY SPONSORED**
15 **TESTING.**

16 “Notwithstanding any other provision of Federal law,
17 no funds provided under this Act to the Secretary or to
18 the recipient of any award may be used to develop, pilot
19 test, field test, implement, administer, or distribute any
20 federally sponsored national test in reading, mathematics,
21 or any other subject, unless specifically and explicitly au-
22 thorized by law.

23 **“SEC. 8604. SENSE OF CONGRESS REGARDING MEMORIALS.**

24 “It is the sense of Congress that—

25 “(1) the saying of a prayer, the reading of a
26 scripture, or the performance of religious music, as



VIII–61

1 part of a memorial service that is held on the cam-
2 pus of a public elementary or secondary school in
3 order to honor the memory of any person slain on
4 that campus is not objectionable under this Act; and
5 “(2) the design and construction of any memo-
6 rial which includes religious symbols, motifs, or
7 sayings that is placed on the campus of a public ele-
8 mentary or secondary school in order to honor the
9 memory of any person slain on that campus is not
10 objectionable under this Act.

11 **“PART G—EVALUATIONS**

12 **“SEC. 8651. EVALUATIONS.**

13 “(a) RESERVATION OF FUNDS.—Except as provided
14 in subsections (b) and (c), the Secretary may reserve not
15 more than 0.5 percent of the amount appropriated to
16 carry out each categorical program and demonstration
17 project authorized under this Act—

18 “(1) to conduct—

19 “(A) comprehensive evaluations of the pro-
20 gram or project; and

21 “(B) studies of the effectiveness of the pro-
22 grams or project and its administrative impact
23 on schools and local educational agencies;

24 “(2) to evaluate the aggregate short- and long-
25 term effects and cost efficiencies across Federal pro-



VIII–62

1 grams assisted or authorized under this Act and re-
2 lated Federal preschool, elementary and secondary
3 programs under any other Federal law; and

4 “(3) to increase the usefulness of evaluations of
5 grant recipients in order to ensure the continuous
6 progress of the program or project by improving the
7 quality, timeliness, efficiency, and utilization of in-
8 formation relating to performance under the pro-
9 gram or project.

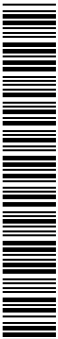
10 “(b) TITLE I EXCLUDED.—The Secretary may not
11 reserve under subsection (a) funds appropriated to carry
12 out any program authorized under title I.

13 “(c) EVALUATION ACTIVITIES AUTHORIZED ELSE-
14 WHERE.—

15 “(1) IN GENERAL.—If, under any other provi-
16 sion of this Act (other than title I), funds are au-
17 thorized to be reserved or used for evaluation activi-
18 ties with respect to a program or project, the Sec-
19 retary may not reserve additional funds under this
20 section for the evaluation of such program or
21 project.”.

22 **SEC. 802. COMPREHENSIVE REGIONAL ASSISTANCE CEN-**
23 **TERS.**

24 (a) IN GENERAL.—Part A of title XIII (20 U.S.C.
25 8621 et seq.)—



VIII-63

1 (1) is transferred to the end of title VIII, as
2 amended by section 801; and

3 (2) is redesignated as part H.

4 (b) REDESIGNATION OF SECTIONS.—Sections 13101
5 through 13105 are redesignated as sections 8701 through
6 8705, respectively.

7 (c) CONFORMING AMENDMENTS.—

8 (1) REQUIREMENTS.—Section 8702 (as redesignig-
9 nated by subsection (b)) is amended—

10 (A) by striking “section 13101(a)” and in-
11 serting “section 8701(a)”; and

12 (B) in paragraph (7), by striking “section
13 13201” and inserting “section 8751”.

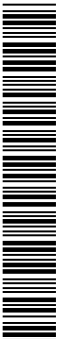
14 (2) MAINTENANCE OF SERVICE.—Section
15 8703(b) (as redesignated by subsection (b)) is
16 amended—

17 (A) in paragraph (1), by striking “section
18 13102” and inserting “section 8702”; and

19 (B) in paragraph (2)—

20 (i) by striking “section 13201” and
21 inserting “section 8751”; and

22 (ii) by striking “section 13401” and
23 inserting “section 8851”.



VIII–64

1 (3) TRANSITION.—Section 8704(b)(1) (as re-
2 designated by subsection (b)) is amended by striking
3 “section 13105” and inserting “section 8705”.

4 **SEC. 803. NATIONAL DIFFUSION NETWORK.**

5 (a) IN GENERAL.—Part B of title XIII (20 U.S.C.
6 8651 et seq.)—

7 (1) is transferred to the end of title VIII, as
8 amended by section 802; and

9 (2) is redesignated as part I.

10 (b) REDESIGNATION OF SECTIONS.—Sections 13201
11 and 13202 are redesignated as sections 8751 and 8752,
12 respectively.

13 (c) CONFORMING AMENDMENT.—Section 8751(f)(4)
14 (as redesignated by subsection (b)) is amended by striking
15 “section 13401” and inserting “section 8851”.

16 **SEC. 804. EISENHOWER REGIONAL MATHEMATICS AND**
17 **SCIENCE EDUCATION CONSORTIA.**

18 (a) IN GENERAL.—Part C of title XIII (20 U.S.C.
19 8671 et seq.)—

20 (1) is transferred to the end of title VIII, as
21 amended by section 803; and

22 (2) is redesignated as part J.

23 (b) REDESIGNATION OF SECTIONS.—Sections 13301
24 through 13308 are redesignated as sections 8801 through
25 8808, respectively.



VIII-65

1 (c) CONFORMING AMENDMENTS.—

2 (1) GRANT AUTHORIZATION.—Section
3 8801(a)(3) (as redesignated by subsection (b)) is
4 amended by striking “section 13308” and inserting
5 “section 8808”.

6 (2) USE OF FUNDS.—Section 8802 (as redesign-
7 nated by subsection (b)) is amended—

8 (A) by striking “section 13304” and in-
9 serting “section 8804”;

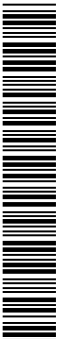
10 (B) in paragraph (2), by striking
11 “13301(a)(1)” and inserting “8801(a)(1)”; and

12 (C) in paragraph (3), by striking
13 “13301(a)(1)” and inserting “8801(a)(1)”.

14 (3) PAYMENTS.—Section 8805 (as redesignated
15 by subsection (b)) is amended in each of subsections
16 (a) and (b) by striking “section 13303” and insert-
17 ing “section 8803”.

18 (4) EVALUATION.—Section 8806(a) (as redesign-
19 nated by subsection (b)) is amended by striking
20 “section 14701” and inserting “section 8651”.

21 (5) DEFINITIONS.—Section 8807(4) (as redesi-
22 gnated by subsection (b)) is amended by striking
23 “section 13301” and inserting “section 8801”.



VIII-66

1 **SEC. 805. TECHNOLOGY-BASED TECHNICAL ASSISTANCE.**

2 (a) IN GENERAL.—Part D of title XIII (20 U.S.C.
3 8701)—

4 (1) is transferred to the end of title VIII, as
5 amended by section 804; and

6 (2) is redesignated as part K.

7 (b) REDESIGNATION OF SECTION.—Sections 13401
8 is redesignated as section 8851.

